

Commission on Fatherhood Issues
Commission Meeting #4 – October 28, 2002

Meeting Summary

Members present: Sen. Michael J. McAlevey, Co-Chair; Rep. Deborah L. Simpson, Co-Chair; Sen. Peggy Pendleton, Rep. Marie Laverriere-Boucher, Rep. Glenn Cummings, Emily Douglas, Ph. D. and Heidi Leinonen.

Staff present: Phil McCarthy and Alison Ames.

Public present: Mona Bloom, Tom Chandel, Susan Cover and Steve Hussey.

1. Call to order. The Commission meeting was called to order at 9:25 a.m.

2. Review meeting agenda and expectations. Sen. McAlevey asked Commission members and staff to introduce themselves; asked members if they had any comments on the summary from the October 10th meeting and reviewed the day's agenda. Commission members briefly discussed the resignation of Commission member Donald Farrell.

3. Overview of preliminary findings. Phil McCarthy presented a "side-by-side" analysis of the "Potential Findings – Barriers, Strategies and Services" which summarized the discussion of preliminary findings held during the October 10th meeting and -- per instructions from Commission members during that meeting -- also includes comments (received via USPS mail and e-mail) of Commission members who were not present during the October 10th discussion.

Discussion. Commission members discussed the following:

- ♦ "Potential" findings represent a starting point for the Commission's deliberations and members are free to add or delete findings as we have a healthy discussion of the issues in reaching our final conclusions and recommendations;
- ♦ Some Commission members expressed frustration that the decisions of members who attended and participated in the last meeting are -- in essence -- invalidated by those who were not in attendance; and also questioned how the Commission will deal with members who are not in attendance today and who may disagree with Commission decisions;
- ♦ Sen. McAlevey noted that, by virtue of their appointment, all Commission members -- regardless of the amount of time they attended meetings -- are part of the Commission; and suggested that any member can take out a minority report and that all members will have an opportunity to testify on any legislation proposed by the Commission to the next Legislature; and
- ♦ Rep. Simpson asserted that the decisions of the Commission will be made by the members present and will not be undone by those not in attendance; and agreed that the minority report option is available to any Commission member not in agreement with a majority decision of the Commission members.

4. Perspectives on divorced fathers in Maine. Paul Ouellette, MSW, presented perceptions gleaned from his own divorce 28 years ago, from his active involvement in "divorce reform" and

from his 25 years experience as a social worker whose private practice involves work with Maine divorced fathers. Mr. Ouellette presented the following perspectives on Maine's divorce laws and fatherhood:

- ♦ Following a divorce, non-custodial fathers don't often have much of a relationship with their children; in many cases, a non-custodial father's visit to their child's home would result in conflict instigated by their ex-wives and the non-custodial father would decide to stay away and avoid putting their child through more conflict;
- ♦ Male law school professors would confide that the Courts viewed men seeking custody as only trying to get even with their ex-wives and that the men would soon be "chasing skirts" and forgetting about their children; and female law school professors were basically rude and dismissive of men seeking custody;
- ♦ Helped to establish the Coalition Organized for Parental Equality (COPE), a support group for non-custodial parents committed to men and women being treated equally in the Courts; and became active in advocating for legislative reform of divorce law, particularly with respect to proposing mediated divorces, developing standards/guidelines for determining custody and residency decisions and addressing issues related to domestic violence;
- ♦ Research on physical assaults in domestic relationships between men and women indicated that 50% of the perpetrators are men and 50% are women; moreover, research has found that children are 40% more likely to be physically assaulted by a woman than by a man;
- ♦ The folklore in the community for fathers is that they expect to "get screwed" when they get to divorce Court;
- ♦ Developed the term "problems of living while male" as a way to describe the bias that men and fathers experience as a result of state policies and (term was adapted from those who speak about "problems of driving while black");
- ♦ Recommend the establishment of a Maine Commission for Fathers that can collect and analyze data from Maine fathers before any solutions are proposed for legislation; and
- ♦ Further recommend that an "800 number" be set up so that men have a safe place to go with their issues and where they can be directed to appropriate resources for assistance.

Handouts. Mr. Ouellette provided written testimony and the following materials to the Commission:

- ♦ Table 2 "Comparison of Husband and Wife Violence Rates" from Straus, 1978; and
- ♦ "Assaults By Wives on Husbands: Implications for Primary Prevention of Marital Violence" from Straus, 1989.

Discussion. Commission members and Mr. Ouellette discussed the following:

- ♦ While the presentation and materials provide one source of information regarding domestic assaults and violence committed by women against men and children, there is a "disconnect" between the presentation and the reality that women have been in a position of inequality in our society, particularly in terms of the incidence of violence against women as established by the research and data regarding domestic violence which indicates that women are most often the victims of such violence;

- ♦ While our task is to focus on issues confronting fathers, it is important that we measure our recommendations against the standard of keeping women, children and men safe;
- ♦ The relative merits of a resource directory as compared to an “800 number”; while having access to a resource list is good, having an informed person to talk to and the opportunity to express emotions and be directed to appropriate resources and services may be more helpful to men in their time of need; and
- ♦ Commission staff informed members that the Department of Human Services staff announced that the Portland United Way is involved in coordinating agencies and seeking funding to establish a “211 Community Information and Referral System” phone number that can provide statewide access to resource directory information (Note: Announced at the Early Childcare & Education forum last week; Connecticut has such a service).

5. Overview of the Family Division of the Maine District Court. Panel of Chief Judge Vendean Vafiades; Judge Joyce Wheeler; Wendy Rau, Family Division Administrator; and Barbara Cardone, Chair, Maine Bar Association, Family Law Section, provided an overview of Maine law and jurisprudence in determining parental rights and responsibilities and their observations on perceptions of institutional or gender bias in our Courts with respect to proceedings involving "parental rights and responsibilities" and "protection from abuse" cases. The panel presentation including the following information:

- ♦ Chief Judge Vafiades introduced the panelists, thanked the Commission for the opportunity to discuss the workings of the Family Division and pointed out that:
 - (1) together with the Legislature and the Executive, the Judiciary has modernized the District Court in terms of how it addresses cases involving family law matters;
 - (2) the Court makes decisions based on factual information regarding situations from which it is often difficult to distinguish between conventional wisdom and reality and from which the litigants sometimes perceive themselves to be winners and losers; and
 - (3) while the Court is extremely busy, there is a system in place to take an internal look at the workings of the Family Division;
- ♦ Judge Wheeler described the investigation conducted by the Maine Commission on Gender, Justice & Courts (1993-1996) which surveyed other state's gender bias studies, collected demographic information on Maine Courts, analyzed Court policies and procedures and gathered data from 23 focus groups comprised of litigant, attorneys, judges and Court personnel. Among the commission's conclusions were:
 - (1) that gender inequities and imbalances exist in our culture and society; and that the judicial system -- which applies otherwise gender-neutral laws and procedures -- must not perpetuate these existing gender-related imbalances;
 - (2) on most issues, inequities and unfairness were not attributable to bias *per se*, but rather to other, more complex factors related to economic and cultural aspects of our society;
 - (3) there is a widely-held perception in Maine and the U.S. that gender bias affects the way people are treated in Court and the outcomes of various legal matters;
 - (4) while both genders perceived process and outcome bias, male litigants commonly perceived a systematic bias in favor of mothers in custody proceedings; and
 - (5) any gender-related unfairness was multiplied by persistent under-funding of the judiciary;
- ♦ The commission's report recommended that:
 - (1) training regarding gender fairness, bias and disparate impact be provided for judges,

litigators and mediators;

(2) the Courts make greater use of non-adversarial forums;

(3) judges' orders explain to litigants the factors taken into account in determining custody;

(4) additional resources be provided so that the Court can provide early access to litigants and expedite proceedings to preempt the use of inappropriate tactics; and

(5) the Family Division be established and that the position of Case Management Officer (CMO) be created to inform litigants of their rights and the legal process in family proceedings before the Court;

- ♦ Wendy Rau, Family Division Administrator, provided an overview of the Family Division, which was established in 1998, including its *mission*: "to provide a system of justice that is responsive to the needs of families and the support of their children" and its *goals*: to promptly address and resolve family cases in a timely manner, to provide effective case management for family cases involving children, to facilitate parenting arrangements in the best interests of the child; to provide Court users with a better understanding of Court processes and information about support services for parents and families; and to make appropriate referrals to alternative dispute resolution services;

- ♦ Ms. Rau indicated that the starting point of the process is the initial case management conference, which usually occurs within 35-45 days of the initiation of the Court action, and where a CMO meets with litigants to make sure they understand the process, to focus on the children's needs and protect their interests, to identify the issues involved in the conflict and, if the parties agree, the CMO presents a case *précis* or, if parties are unable to agree, to make initial decisions on a process to move the case towards resolution, which may involve mediation, parent education or a guardian ad litem;

- ♦ Ms. Rau reported that the Family Division employs 8 CMOs who travel to the 31 District Courts in the State; that the Family Division leverages child support funds to finance the employment of CMOs, with 1/3 of CMO funding coming from state General Funds and 2/3 coming from child support funds; and that CMOs receive training in domestic violence issues and are authorized to make temporary "no contact" orders in domestic violence cases;

- ♦ Finally, Ms. Rau reported that the Family Division utilizes federal "Access & Visitation" grant funds to promote the establishment of county agencies that can provide support services for parents and families;

- ♦ Attorney Barbara Cardone, Chair of the Maine Bar Association's Family Law Section, has practiced in the area of family law for 16 years and provided the following observations on family proceedings in the Maine Courts:

(1) statistics, generalities and stereotypes -- in and of themselves -- should not unreasonably influence laws, policies and operations of Court; individual situations and specific circumstances should define what Court needs to address; and

(2) concerned with proposal to mandate a "shared parenting presumption" on the Court, which could be detrimental to maintaining the current focus on the best interest of child and would diminish the due discretion that judges and Court officers require to deal with individual circumstances of each case;

- ♦ Judge Wheeler described initiatives launched by the Family Division during the past 3-4 years related to providing training on gender equity:

(1) Judges, CMOs and Court officers take part in a training exercise to raise self-awareness regarding their own gender biases (e.g., reflect on characteristics that men and women possess and whether or not they might interfere with proper decision making regarding cases);

(2) juvenile and adult drug treatment Courts have focused on restoring families and are now able to provide support systems that help men and women with alcohol and drug problems to get clean and sober so that they can deal with their parenting rights and responsibilities; and

(3) domestic violence Court “pilot project” permits a non-custodial parent to interact with their children during a domestic violence case (i.e., by way of judicial review and following a Court order; and while the non-custodial parent takes part in a batterers intervention program).

Handouts. Panel members provided the following materials to the Commission:

- ♦ Report of the Maine Commission on Gender, Justice & Courts;
- ♦ Maine Supreme Judicial Court “Administrative Order on Gender Equality” (Docket No. SJC-136; Effective date: June 12, 1998);
- ♦ Maine Policy Review article on “Maine’s Family Division – Lighting a Dark Stairway” (Spring, 2002);
- ♦ Family Division Rules: Mission and Goals; and
- ♦ Parent Education Programs brochure – “What Kids Need.”

Discussion. Commission members and panelists discussed the following issues raised during the panel presentation:

- ♦ Policy considerations related to legal “presumptions,” the “best interests of the child” standard and other factors the Court considers in determining “parental rights and responsibilities” for a minor child, including the following:

(1) Why not adopt a gender-neutral policy that both the mother and father have an equal capacity to raise their child and that directs the Court to establish a “presumption” of *shared* parental rights and responsibilities as the *starting point* for the Court to begin its deliberations of “parental rights and responsibilities” and then the Court can consider the “best interests of the child” standard and other appropriate factors in its deliberations;

(2) New Hampshire public policy and law has two “presumptions” -- “joint physical custody” and the “best interests of the child” -- except that a domestic violence finding can override these presumptions; why not implement a similar policy in Maine; the benefit of the “joint physical custody” presumption is that it puts fathers’ issues “on the table” and declares that state policy to both parents; this has the benefit of responding to perceptions of bias, particularly if fathers are discouraged from even going to Court due to a perception of bias;

(3) Current Maine law declares that a minor child should have “frequent and continuing contact” with both parents, that it is in “the public interest to encourage parents to share the rights and responsibilities of child rearing” and directs the Court to honor “shared parenting” arrangements -- including “shared primary residential care” -- when both parties agree *unless* the Court finds substantial evidence (and states its reasons in an order) as to why such “shared parenting” arrangements should not be ordered;

(4) The difference between a public policy declaration and a legal standard or “presumption” is that the former is a policy finding or statement and the latter is a binding, legal requirement;

(5) Chief Judge Vafiades believes that the Legislature achieved the proper balance in crafting legislation that both declared public policy and directed the Court to consider certain factors in determining “parental rights and responsibilities” and also suggested that to add further legal standards or presumptions would be “over-legislating”; in her view, current statutes have the

following benefits: (a) what works best for children also works for parents; (b) supports the public interest in defeating domestic violence; and (c) supports the public interest in promoting shared parenting;

(6) The Family Law Advisory Council stated that the foremost concerns with establishing a “presumption” of “shared primary residential care” (e.g., a “50-50” residential arrangement such as alternating weeks with each parent) are factors related to the “best interests of the child,” including: (a) it would not take into account the developmental stages of each individual child; (b) it may disregard the ability of parents to cooperate in making the schedule work and the geographic realities involved; (c) it would limit the Court’s discretion in dealing with the individual circumstances of each case; (d) it may create conflict where none exists (e.g., parents may prefer something other than a “50-50” residential arrangement) and may result in more litigation; and (e) it would overturn current statutory provisions requiring consultation and regular communication and would likely require greater enforcement efforts;

(7) Enforcement mechanisms include resources for parenting education and enforcement actions; if a Court order is not being followed, a CMO conference can be arranged and, if a conflict occurs that the parties cannot resolve themselves, shared parenting agreements sometimes include *automatic* mediation provisions; and

(8) Chief Judge Vafiades also observed that the Court frequently see adults more concerned with their own interests than the child’s interests; and parents who may have their own personal challenges (e.g., ego needs, insecurity) to overcome; if parents come to Court in an honest attempt to resolve problems, then our Courts can help the situation; we should focus on child development and parental responsibilities -- it’s all about children ending up okay regardless of their parents’ legal status and encouraging adults to carry out their childrearing responsibilities;

- ♦ Noncustodial fathers sense a “double standard” in how the Court handles cases involving the determination of parental rights and responsibilities, fathers are held “responsible” for paternity and making child support payments, but -- once the Court order determines access and visitation rights -- they often face barriers in having their access and visitation “rights” enforced and must file additional motions with the Court to enforce the order, to hold the so-called custodial parent in contempt or to make a motion to modify the order;

- ♦ The need for additional resources to support “Access and Visitation” centers and to provide for safe exchanges and supervised visits in a conflict-free and comfortable environment;

- ♦ Whether or not both parents have input on education and medical decisions as part of their “parental right and responsibilities”;

- ♦ Whether or not gender bias training is provided for “guardian ad litem”;

- ♦ Litigants filing an action before the Family Division have the option of being represented by attorneys during a case management conference;

- ♦ Current backlog of cases scheduled before the Court is 45 to 50 days and the Court would prefer to reduce this time to 21 days;

- ♦ The need for additional funds to deploy 4-5 additional CMOs which would reduce the time it takes to conduct initial case management conferences, would greatly assist families with low-cost intervention in their time of need and would shorten or eliminate the backlog of cases scheduled before the Court; and

- ♦ Average CMO caseload is 1,200 per year; ideal workload would be 500 per year; and

- ♦ Judge Wheeler suggests the case management process works as she sees far fewer unresolved cases coming to her following the case management conferences.

6. Overview of school-based and community-based initiatives to enhance fatherhood.

David Stockford, Department of Education (DOE), and Peter Walsh, Department of Human Services (DHS), presented the following perspectives on state initiatives, including school- or community-based programs that hold promise in enhancing the parenting abilities of fathers:

- ♦ Mr. Stockford provided an overview of DOE curricular and cocurricular initiatives, including the establishment of the Common Core of Learning (1984), Maine's System of Learning Results (1997) and the Taking Responsibility: Standards for Ethical and Responsible Behavior (2001);
- ♦ Mr. Walsh provided "Number of Divorces and Marriages in Maine" which indicated that Maine is near the top of the nation in divorce rates and that 25% to 30% of Maine children currently live in single parent household and that more than 50% will live in single parent household by 18 years of age;
- ♦ Mr. Walsh also provided an overview of DHS initiatives, including the establishment of the Governor's Children's Cabinet, Communities for Children, Parents as Children's First Teachers and the Task Force on Early Childcare and Education;
- ♦ During the past 5 years, the Governor's Children's Cabinet, comprised of the following child- and family-serving state agencies: DOE, DHS, Department of Behavioral and Developmental Services, Department of Corrections, Department of Labor and Department of Public Safety, has implemented the following programs and services:
 - (1) Family Home Visitation – conducted 5,000 home visits for first-time families; mother, child and father; provides information and access to programs and services;
 - (2) Promotion of parents as children's first teacher;
 - (3) Head Start programs and fatherhood initiatives in a substantial number of counties;
 - (4) Integrated Case Management System – model places family at the center of services and appoints "lead" case manager to view the overall needs of family; approach has taken hold in region 3 and we are expanding to regions 1 and 2;
 - (5) Maine Mentoring – Need adult leadership to aid and support families initiative to increase mentors across the State from 3,500 to 33,000; need to work on prevention as we have 400 child welfare officers and we don't need more cases;
 - (6) Family Impact Committee – focus on strengthening families and addressing the impacts of divorce, violence, trauma, economics and education on families; and
 - (7) Welfare reform – triangle of responsible parties includes the mother, the father and the government; child support enforcement efforts have collected \$100,000,000 out of \$500,000,000 (e.g., one man paid \$30,000 in arrears to be able to use his permit to hunt moose).

Handouts. The following materials were provided to the Commission:

- ♦ Executive Summary of the Report of the Commission for Ethical and Responsible Student Behavior: "Taking Responsibility: Standards for Ethical and Responsible Behavior in Maine Schools and Communities";
- ♦ Brochure titled: "Maine's Learning Results: What Students Need to Know & Be Able to Do: Information for Parents";
- ♦ "Number of Divorces and Marriages in Maine and Rates per 1,000 population: Maine Occurrences 1980 - 2001"; and
- ♦ "Maine Children's Cabinet Family Impact Committee" (October 2000).

Discussion. Commission members and panelists discussed the following issues:

- ♦ The rights of noncustodial parents to have access to their children's school records and to receive notice of their children's school activities; State law provides that they should have this access and notice, but legislators receive many calls from constituents that school officials are not always providing such information;
- ♦ Specific requirements regarding access to confidential student records under the Federal Family Educational Rights and Privacy Act (FERPA) may be in conflict with "permissive" State law related to a noncustodial parents' access to such information *if* a court order is not explicit about providing such access to otherwise confidential information;
- ♦ School officials are required by Federal law to see evidence of specific rights granted under court orders and more recent Federal requirements related to safe schools, bomb threats, homeland security, confidentiality of health records and the residency status of noncustodial parent add complexity to these matters;
- ♦ Commission members suggested that the State law needs to be clarified to encourage school policy to maintain contact information on both parents so that they can be involved in their children's education; such policies are necessary with the emergence of more "blended families" and the unfulfilled needs of noncustodial parents, particularly around proper notice of their children's school activities; if appropriate, the Legislature may wish to have the Maine Office of the Attorney General review the legal implications of recent federal requirements and Maine statutes related to access and notice to noncustodial parents; and
- ♦ The extent to which the state standards of Maine's Learning Results and other curricular initiatives in the schools address gender socialization.

7. Commission work session. Commission members and staff reviewed and discussed findings, conclusions and recommendations, including the following:

- ♦ Commission staff reminded Commission members that they have the opportunity to introduce any legislation necessary to implement their recommendations;
- ♦ Sen. McAlevey suggested that it may be fair to assume that all Commission members would support introducing legislation to provide funding to the Family Division of the District Court for deploying additional CMOs and to the Department of the Attorney General for continuing the Non-Custodial Parent Outreach and Investigation Project (NCPOIP); and
- ♦ Rep. Laverriere-Boucher proposed that the Commission separate out the recommendations that would have a fiscal impact into one bill and those that would make substantive statutory changes into other bills.

Motion: Senator Pendleton (second by Rep. Laverriere-Boucher) moved to provide funding to the Family Division of the District Court for the state matching funds necessary to deploy an additional 5 CMOs. **Vote:** 7-0.

Motion: Senator Pendleton (second by Sen. McAlevey) moved to provide funding to Department of the Attorney General for continuing the NCPOIP after the Federal grant funding ends. **Vote:** 7-0.

- ♦ Sen. McAlevey suggested that the Commission report should include a general statement or caveat that a perception of barriers is nonetheless a real barrier for person that perceives it;
- ♦ Sen. Pendleton supported a statement that it is difficult to determine whether a person perceives a barrier or whether the barrier actually exists;
- ♦ Rep. Laverriere-Boucher proposed that the Commission support the information presented earlier by the Family Division judges who suggested that litigants are initially uninformed about the law and the court process and that the case management conference educates them about court proceedings and the services that are available to them; and further proposed that the Commission focus on proposing recommendations that can realistically be helpful in overcoming barriers; and
- ♦ Rep. Simpson agreed that the barrier is actually a lack of understanding about the court process and that education can eliminate misperceptions.

Discussion. Commission members revisited the “Potential Findings” document from the October 10th meeting (representing the consensus views of Rep. Simpson, Sen. Pendleton, Rep. Laverriere-Boucher, Ms. Douglas and Ms. Leinonen) and discussions resulted in a general consensus regarding the following:

Findings Related to the Multiple Barriers to Fathers' Involvement in the Lives of their Children and to Active, Positive Parenting By Fathers

Personal Barriers

- ♦ Some fathers may not understand the importance of being an active parent who is engaged in their children’s life;
- ♦ Some fathers may lack job skills, may be unemployed/underemployed and may have increased commuting time to work;
- ♦ Some fathers may lack access to affordable housing and child care;
- ♦ Some fathers may abuse alcohol and other drugs;
- ♦ Some fathers may not manage their emotions or separate their emotions from aggression, abuse and violence;
- ♦ Some fathers may lack reliable transportation and may face significant travel time to their children’s primary residence; and
- ♦ The physical absence of fathers in their children’s homes is a major barrier to fatherhood.

Cultural Barriers

- ♦ Cultural expectations regarding the roles that boys, men and fathers play in society, communities and families differ from those related to girls, women and mothers;
- ♦ Boys and men may lack the developmental opportunities that can serve to cultivate caring and engaged fathers; and
- ♦ For fathers and mothers, our society seems to value a “provider ethic” and to devalue a “family ethic” which often creates a dilemma with regard to the time they devote to work and the time they devote to parenting.

Institutional Barriers

- ♦ Some schools are not providing a welcoming environment for fathers and some fail to foster and maintain the lines of communication necessary to engage fathers more fully in their children's learning;
- ♦ The statute defining the duty that school officials have in providing notification to the non-custodial parent of their child's school activities is too "permissive" and some schools are not providing this information to fathers as required by law and by court orders;
- ♦ Some fathers perceive a lack of respect when they contact state agency personnel;
- ♦ State government and local education agencies may not include contact information for fathers (particularly non-custodial fathers) in their records which may prevent fathers from accessing resources available to them and information about their children in periods of crisis;
- ♦ Some non-custodial fathers are unable to have contact with their children due to inadequate resources for providing visitation centers, including "supervised" child contact centers and services to enable them to have contact with their children;
- ♦ Low-income, non-custodial fathers often have fewer resources available to them in terms of programs that can provide them with the assistance necessary to become self-sufficient and meet their child support obligations; and
- ♦ Maine does not currently have an agency eligible to receive federal funds that are available to support faith-based initiatives.

Legal Barriers

- ♦ Some federal and state policies, laws and programs may not reflect the importance of fathers in the lives of their children;
- ♦ Court is an adversarial place and an uncomfortable environment for parents in the process of divorce or separation;
- ♦ Some fathers lack access to affordable mediation and legal services;
- ♦ Fathers need alternative approaches -- other than having to take further legal action -- to resolve disputes and problems in the areas of "parental rights and responsibilities"; and
- ♦ Non-custodial fathers need the family case management process to continue when disputes arise following a court order.

Discussion. Commission members discussed the following strategies and proposed recommendations related to overcoming these barriers:

- ♦ Ms. Leinonen recommended that the Commission should support the establishment of a "211" Community Information and Referral System phone number that can provide statewide access to resource directory information (e.g., the Portland United Way coordinating agencies and seeking funding for a phone-based resource guide to information and Ingraham Family Services is establishing an internet-based resource guide);
- ♦ Sen. McAlevey suggested that the DOE or Maine School Management Association advise superintendents of the laws requiring that non-custodial parents have access to school information and notification of their child's school activities;
- ♦ Sen. McAlevey recognized a non-custodial father (name not noted) who asked to provide public comment on this issue; and he commented that he was receiving notification of his child's

school activities until a new superintendent changed the local policy and further reported that – out of concern -- he went to his child’s school on September 11th and was chased off campus;

- ♦ Commissioners debated the “pros” and “cons” of providing a non-custodial parent with access to school information and notification of their child’s school activities: (a) “Pros” -- State law and court orders may authorize such access/notice and the custodial parent should bear the burden of stating their reasons for denying access/notice; and (b) “Cons” -- Federal law and particular circumstances may preclude such access/notice (e.g., the custodial parent of a special education student has “right of appeal” and may deny access/notice and the foster parents of a foster child may deny access/notice to the child’s biological parents for safety reasons);

- ♦ Commissioners appeared close to a compromise on amending existing State law to balance the needs of both parents who are party to a court order allocating “shared parental rights and responsibilities and the “best interest of the child” and proposed that Rep. Cummings and Ms. Leinonen work with commission staff to draft some compromise language (Note: this proposal was subsequently withdrawn and replaced by a motion later in the meeting);

- ♦ Commissioners reviewed the perceptions of institutional barriers in State agencies and schools and proposed a few recommendations:

- (1) Sen. McAlevey recommended that state agencies, whenever appropriate, need to provide resources and services to mothers and fathers;

- (2) Rep. Cummings recommended that the tone of DHS correspondence to putative or non-custodial fathers needs to be softened and that any antagonistic language related to legal actions be relegated to an attachment;

- (3) Rep. Laverriere-Boucher recommended that state agencies should provide training for personnel to ensure a respectful climate and that state agencies and schools should maintain records of both parents, including the non-custodial parent, in records related to children; and

- (4) Rep. Simpson recommended that state policies and programs should reflect the importance of fathers in the lives of their children;

- ♦ Ms. Douglas recommended that the Commission support the expansion of visitation centers beyond the two existing centers;

- ♦ Ms. Leinonen recommended that the Commission recommendation refer to “visitation services” which applies to various types of access and visitation services, including the child contact centers, neutral drop-off and pick-up sites and parent education programs;

- ♦ Rep. Laverriere-Boucher recommended that the Commission send a letter to the Children’s Cabinet requesting that they address the need for “access and visitation” programs and services across the State;

- ♦ Ms. Leinonen recommended that the Commission request that DHS review the allocation of federal funds received through the Access and Visitation Grant Project, including the deployment of these funds for non-DHS cases;

- ♦ Commission staff informed members that when the Legislature codified the Governor’s Children’s Cabinet, it also established an Advisory Council on Families and Children, which includes representatives of the executive, legislative and judicial branches of state government;

- ♦ Ms. Douglas recommended that the State needed to maintain better court records regarding the number and outcome of divorce cases with respect to the allocation of “parental rights and responsibilities,” particularly the primary residence of the child and the access and visitation schedule for the non-custodial parent;

- ♦ Rep. Simpson recommended that the cases needed to be qualified with respect to whether or not they were contested or uncontested divorces;

- ♦ Sen. McAlevey recommended that the Commission direct the Courts to collect this data through the MCJUSTIS system;
- ♦ Ms. Douglas recommended that the Commission propose legislation to implement a presumption of shared primary residential care;
- ♦ Rep. Simpson indicated that the Legislature rejected this proposal last years when the Judiciary Committee considered LD 1405; and also reiterated that this bill enacted a new statutory provision that directs the Court to honor “shared primary residential care” when both parties consent to this arrangement *unless* the Court finds substantial evidence (and states its reasons in an order) as to why such an arrangement should not be ordered; and further suggested that time is needed to test this new law;
- ♦ Rep. Cummings suggested that it is only fair to assume that both parents are working for the child’s best interests; and pointed out that creating a clear and fair standard of “shared primary residential care” as the “starting point” for court deliberations would not unduly tie a judges hands since they could then consider other mitigating factors -- such as the “best interests of the child” standard -- in moving away from a 50% - 50% sharing of primary residential care;
- ♦ Rep. Simpson suggested that this proposal is placing the interests of the individual parent ahead of the interests of the child;
- ♦ Ms. Douglas stated that it is fair and in the “best interests of the child” to have both parents involved in the child’s life;
- ♦ Ms. Leinonen reminded Commission members of testimony received from the Family Division judges earlier in the day -- that the majority of cases are not contested and that such a presumption could increase hostility and court time;
- ♦ Rep. Cummings reminded Commission members of the testimony presented by fathers who just give up and don’t contest these cases; and also suggested that the adversarial nature of these cases may decrease since both parties will enter the proceedings on an equal footing; and
- ♦ Rep. Simpson expressed her difficulty in understanding the claim that the Court is biased against fathers when statistics show that fathers win “primary residential care” in contested divorces more often than mothers; and also stated that each case is unique and the Court needs to have the flexibility to hear the evidence and decide what’s in the “best interests of the child.”

Motion: Sen. McAlevey (second by Ms. Douglas) moved to establish a presumption of shared primary residential care if one or both parents file a motion to seek primary residential care; and then consider mitigating factors as required by current law -- such as the “best interests of the child” standard -- in moving away from a 50% - 50% sharing of primary residential care.

Vote: 4-3. *Majority report:* Sen. McAlevey, Sen. Pendleton, Rep. Cummings¹ and Ms. Douglas; and *Minority report:* Rep. Simpson, Rep. Laverriere-Boucher and Ms. Leinonen.

(**Note:** Commission members on the minority report indicated that their recommendation is to continue with current law on this matter).

- ♦ Rep. Simpson indicated that she and Ms. Leinonen have reconsidered and would not take part in the proposed subcommittee to draft a proposal regarding access/notice of school activities to non-custodial parents;

¹ Rep. Cummings contacted the Commission chairs several days after this final meeting to seek the opportunity to reconsider this motion so that he could change his vote. Without the authority for additional Commission meetings and in keeping with the spirit of Maine’s public proceedings statutes, this request was not approved. Be that as it may, Rep. Cummings wished the record to reflect his intent to reconsider his vote on this question.

- ♦ Ms. Leinonen stated that there are too many ways for innocuous information to cause harm to a child and that she didn't want to place any additional burdens on custodial parents;
- ♦ Rep. Cummings replied that current law specifies that a non-custodial parent denied parental rights and responsibilities in a Court order (e.g., a protection from abuse order) shall not have access or receive notice to such school information; and
- ♦ Rep. Laverriere-Boucher reiterated her concerns about adding burdens on foster parents who -- for safety reasons -- may wish to deny the foster child's biological parents from having access to or notice of such school information.

Motion: Rep. Cummings (second by Sen. McAlevey) moved to strengthen the requirement that non-custodial parents have access to school information and notification of their child's school activities. **Vote:** 4-3. *Majority report:* Sen. McAlevey, Sen. Pendleton, Rep. Cummings and Ms. Douglas; and *Minority report:* Rep. Simpson, Rep. Laverriere-Boucher and Ms. Leinonen. (**Note:** Commission members on the minority report indicated that their recommendation is to continue with current law on this matter).

8. Adjournment. The Commission chairs thanked Commission members for their time and effort in dealing with the dynamic and challenging policy issues worked on by the Commission. The meeting was adjourned at 3:57 p.m.

Respectfully submitted,

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